

DD/A Registry

File

DDA 77-3944

OGC Has Reviewed

11 JUL 1977

MEMORANDUM FOR: Legislative Counsel

STATINTL FROM

[REDACTED]

Assistant for Information, DDA

SUBJECT : Congressional Queries Regarding Classification Management

REFERENCE : Letter from Congressman Preyer dtd June 10, 1977 (OLC #77-2432)

In response to Congressman Richard Preyer's letter in reference, we have gathered the information below.

Question 1

The CIA is authorized to classify national security information or material by Executive Order 11652, section 2(A). Only the terms authorized in the Executive order, i.e., Confidential, Secret and Top Secret are used to identify classified information; and, the Agency does not authorize the use of any additional terms or gradations to extend the meaning of these classifications.

Question 2

The Agency does use certain markings, in conjunction with classification, to control dissemination. These are authorized for use in the Intelligence Community by DCID 1/7, 5 October 1975 (see Attachment A), and include WARNING NOTICE--SENSITIVE INTELLIGENCE SOURCES AND METHODS INVOLVED, DISSEMINATION AND EXTRACTION OF INFORMATION CONTROLLED BY ORIGINATOR, NOT RELEASABLE TO CONTRACTORS OR CONTRACTOR/CONSULTANTS, CAUTION--PROPRIETARY INFORMATION INVOLVED, and NOT RELEASABLE TO FOREIGN NATIONALS. Internal markings used on classified documents include CIA INTERNAL USE ONLY and EYES ONLY. The marking CIA INTERNAL USE ONLY is used on classified information which should not be disseminated outside of CIA. Agency Headquarters Regulation [REDACTED] authorizes this marking (see Attachment B). The marking EYES ONLY is used when information, classified or unclassified, is intended for the addressee alone and is not to be disseminated further. Agency regulations recognize this marking for medical information, financial interests and operational cable traffic.

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Another category of markings used in conjunction with classification are sensitive compartmented information (SCI) controls. These markings are applied to documents which contain information of a sensitive nature and which must be handled on a more restricted basis than might be indicated by the classification alone.

STATINTL At one time SECRET-SENSITIVE was a legitimate classification and control marking used to identify material which required greater discretionary handling than that marked with classification alone (see Attachment C). In 1976 at the urging of the Interagency Classification Review Committee, Headquarters Regulation [] was amended and the SENSITIVE marking eliminated. Although no longer authorized by Agency regulations, SECRET-SENSITIVE is occasionally still found on some documents in the Agency.

We can identify only three markings meeting reference paragraph 2 criteria of being used for "records which are not classifiable...but which are not to be made available outside the department." They are EYES ONLY, ADMINISTRATIVE - INTERNAL USE ONLY and FOR OFFICIAL USE ONLY (see Attachment B). In no case though does the marking eliminate the requirement for review under the Freedom of Information or Privacy Acts. As mentioned above, EYES ONLY is used to indicate that dissemination of a document is limited to the addressee(s) alone. This marking has become part of "common law" in the Agency but has not been codified into the regulatory system. ADMINISTRATIVE - INTERNAL USE ONLY is used for unclassified, non-sensitive administrative information of a proprietary interest to CIA. FOR OFFICIAL USE ONLY is used for intelligence information which does not warrant a security classification but does require some degree of limitation on dissemination. This control marking might be required on information for protection under copyright, libel and slander laws.

None of the three markings above preclude release under the Freedom of Information Act and material with these markings are subject to routine review upon request. At that point the marking is removed if the control no longer applies. The limitations on access implied by the markings do not expire; they are removed only upon the decision of the originator or recipient of the material. Since the marking is never used as a basis for denial of information to requesters, it is difficult to envision the circumstances under which the use of these markings would become subject to court challenge. We are aware of no such challenges to date. Document originators determine whether their materials warrant any control markings; but no official delegation of authority exists for individuals to apply the markings. With the exception of EYES ONLY, the markings are not used in conjunction with classification as the materials do not meet the Executive Order 11652 criteria for potential damage to the national security. Material with these designations would be freely available to the public when transferred to the National Archives.

Question 3

Within the past three years the Agency stopped using the marking PRIVILEGED INFORMATION NOT TO BE RELEASED--EXEMPT FROM FREEDOM OF INFORMATION ACT. Originally, the marking was used for information which is protected from release because it fell within one of the nine specific exemption categories of the FOIA. Since the nine exemption categories are permissive though, and not mandatory, the Agency no longer uses the marking. In practice, our policy has been that nothing is automatically excluded from the FOIA. Those older documents which still carry the marking are handled in the same manner as others when requested under FOIA.

The other marking which we have discontinued within the time frame under consideration is SENSITIVE. As indicated previously and in Attachment C, the marking was used to show that a document contained information of a higher sensitivity than might be indicated by the classification alone. It was discontinued at the urging of the ICRC because of its ambiguity and lack of inter-agency agreement as to meaning, handling procedures, storing, etc.

Question 4

During the period 1 July 1971 to 20 June 1976, the Office of Security conducted approximately 3,911 investigations into possible violations of Agency regulations concerning the physical protection of information classified under Executive Order 11652 and Executive Order 10501. None of the investigations concerned administratively restricted data. Only 2,120 resulted in formal charges, that is, a written report was prepared on the incident. Although none of the investigations concerned the assignment of security designations directly, as a result of the investigations documents which were determined to have been overclassified or mis-classified were remarked appropriately by the originator.

Question 5

In none of the 3,911 cases were criminal charges filed or recommended to be filed based on failure to protect information. Formal administrative hearings are not part of the Agency's security investigative program so there were no "hearings" held on the basis of the failure to protect information. But, of the approximate 2,120 security violations charged, the following administrative penalties were adjudicated under the provisions of Headquarters Regulation [redacted] First Violation - Oral reprimand by the component division chief or higher authority and warning of possible consequences of further violations; Second Violation - Written reprimand and warning by the responsible authority concerned and security check duty for one week; Third Violation - Suspension without pay for a period not less than one day or more than thirty days and written warning from the

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Director of Personnel as to the consequences of a fourth violation; Fourth Violation - Suspension without pay for a period of not less than two weeks or more than 30 days and consideration of termination of employment. During the time period in question, in no case was the dismissal penalty effected. We do not compile statistics as to how many infractions involved first, second, third or fourth violations.

Question 6

The Agency does not file charges, administer hearings or assess penalties on the basis of overclassification of information. Administrative action of this nature would be taken in the event that there was evidence of any deliberate attempt to use the classification procedures primarily to cover error, fraud, mismanagement and the like. In the intelligence area it is difficult to predict the degree of damage to national security which would result from a disclosure of a piece of intelligence information, so that the classification process and the decision as to the appropriate level of protection is very subjective. But, in those cases where repeated, obvious overclassification occurs, the Agency prefers to emphasize the positive through re-education of the employee in the meaning and proper application of classification.

Question 7

The Agency does not conduct investigations for other agencies of the Federal government.



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Attachments: a/s

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O/AI/DDA [redacted] ydc (11 July 1977)

Distribution:

Original - Addressee w/atts

- 1 - OGC [redacted] w/atts
- 1 - DDA/OS/PPG w/atts
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- 1 - DDA Subject w/atts
- 1 - DDA Chrono
- 1 - EML Chrono

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A

DIRECTOR OF CENTRAL INTELLIGENCE DIRECTIVE NO. 1/7¹
CONTROL OF DISSEMINATION OF FOREIGN INTELLIGENCE

(Effective 5 October 1975)

Pursuant to provisions of Subsection 102(d) of the National Security Act of 1947, as amended, and other authorities vested in the Director of Central Intelligence by the National Security Council, certain controls on dissemination of foreign intelligence and related material² (hereafter referred to as foreign intelligence) are hereby established and promulgated.

1. Purpose

This directive establishes certain common controls and procedures for the use and dissemination of foreign intelligence to ensure that, while facilitating the interchange of information for intelligence purposes, there will be adequate protection of foreign intelligence sources and methods. This directive restates applicable portions of National Security Council Directive of 17 May 1972 implementing Executive Order 11652, and prescribes additional controls applicable to the U. S. foreign intelligence mission.

2. Applicability

The controls and procedures set forth in this Directive shall be uniformly applied by all member departments and agencies of the intelligence community in the handling of all materials containing foreign intelligence originated by the Central Intelligence Agency or by the intelligence components of other USIB departments or agencies.

3. National Security Council Directive

a. National Security Council Directive of 17 May 1972 implementing Executive Order 11652 stipulates that, except as otherwise provided by Section 102 of the National Security Act of 1947, classified information or material originating in one department shall not be disseminated outside any other department to which it has been made available without the consent of the originating department. This restriction on dissemination is commonly described as the "third agency rule."

b. The NSC Directive stipulates that the dissemination of classified information, including intelligence and intelligence information, orally, in writing or by any other means, shall be limited to those persons whose official duties or contractual obligations require knowledge or possession thereof. This is commonly referred to as the "need-to-know" principle.

¹ Supersedes DCID 1/7, effective 5 October 1970.

² For purposes of this directive, "related material" includes: information describing U. S. foreign intelligence sources and methods, equipment and methodology unique to the acquisition or exploitation of foreign intelligence, foreign military hardware obtained for exploitation, and photography or recordings resulting from U. S. foreign intelligence collection efforts.

c. The NSC Directive also states that documents or portions of documents containing TOP SECRET information shall not be reproduced without the consent of the originating office. All other classified material shall be reproduced sparingly and any stated prohibition against reproduction shall be strictly adhered to.

d. The NSC Directive further requires that the marking, "WARNING NOTICE—SENSITIVE INTELLIGENCE SOURCES AND METHODS INVOLVED," be prominently displayed on all information and materials relating to sensitive intelligence sources and methods; and, that materials so marked will not be disseminated in any manner outside authorized channels without the permission of the originating department and an assessment by the senior intelligence official in the disseminating department as to the potential risk to the national security and to the intelligence sources and methods involved.³ For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated WNINTEL.

4. Advance authorization

a. To facilitate the dissemination and different uses made of classified foreign intelligence within and among USIB departments and agencies, to assure the timely provision of intelligence to consumers and to handle the volume of such materials in a practical way, it is necessary to provide controlled relief to the "third agency rule" within the intelligence community in addition to that provided by Section 102 of the National Security Act of 1947. Accordingly, USIB departments and agencies have been given advance authorization to use each other's classified foreign intelligence in their respective intelligence documents, publications or other information media, and to disseminate their products to third agencies or foreign governments,⁴ subject to limitations and procedures prescribed in this Directive.

b. Classified foreign intelligence documents, even though they bear no control markings, will not be released in their original form to third agencies or foreign governments without permission of the originator. Information contained in classified foreign intelligence documents of another department or agency may be extracted or paraphrased and used by the recipient USIB Agency in classified foreign intelligence reports and released to third agencies, except as specifically restricted by control markings prescribed in this directive. For purposes of this authorization, "WARNING NOTICE—SENSITIVE INTELLIGENCE SOURCES AND METHODS INVOLVED" shall not be considered a restrictive marking.

³ Unless otherwise specified by the Director of Central Intelligence in consultation with USIB or as agreed to between originating and recipient agencies, authorized channels include the intelligence components of USIB departments and agencies and within each department and agency (including their contractors and consultants) as determined by the recipient senior intelligence official.

⁴ Excepting RESTRICTED DATA and formerly RESTRICTED DATA, which is prohibited from foreign dissemination under Sections 123 and 144 of Public Law 585, Atomic Energy Act of 1954, as amended.

c. Information contained in classified foreign intelligence documents of another department or agency not bearing any control markings may be extracted or paraphrased and used by the recipient USIB Agency in reports disseminated to foreign governments provided.⁴

(1) No reference is made to the source documents upon which the released product is based.

(2) The source and manner of acquisition of the information are not revealed.

(3) Foreign release is made through established foreign disclosure channels and procedures.

d. Any department or agency disseminating foreign intelligence beyond the departments and agencies of the USIB shall be responsible for ensuring that recipient departments and agencies understand and agree to observe the restrictions prescribed by this directive and maintain adequate safeguards.

e. No release of a classified foreign intelligence document, whether or not bearing a control marking, shall be made to foreign nationals and immigrant aliens, including U. S. Government employed, utilized or integrated foreign nationals and immigrant aliens, without the permission of the originating agency.

5. Additional authorized control markings

a. In addition to the WARNING NOTICE prescribed by NSC Directive any of the following additional markings may be used on foreign intelligence whenever, in the opinion of the originating department or agency, extraordinary circumstances related to the intelligence source or methods require more specific dissemination restrictions. Use of these markings shall be limited to foreign intelligence, the disclosure of which, could: compromise the status of collaborating foreign governments or officials or otherwise seriously damage U. S. relations with foreign governments; subject U. S. citizens or others to the possibility of personal danger or incarceration; seriously impair the continuing cooperation of private individuals providing foreign intelligence; seriously affect the continuing viability of vital technical collection programs; or, result in the possible compromise or loss of some unique foreign intelligence source or method. These control markings will be individually assigned at the time of preparation of the completed document and used in conjunction with classification and other markings required by Executive Order 11652 and the implementing NSC directive and, unless otherwise indicated in 6a below, carried forward to any new format in which that information is incorporated, including oral and visual presentations.

(1) "DISSEMINATION AND EXTRACTION OF INFORMATION CONTROLLED BY ORIGINATOR"

This marking shall be used when unique source sensitivity factors, known to the originator, require strict compliance with third agency rule procedures, in addition to a continuing knowledge and supervision on the part of the originator as to the extent to which the original document and information

contained therein is disseminated. Documents and information bearing this marking will not be disseminated beyond the Headquarters elements of the recipient organizations and the information contained therein shall not be extracted and incorporated into other reports without the permission of and under conditions prescribed by the originator. (For special purposes, primarily bibliographic notation, communications and automatic data processing, this marking may be abbreviated ORCON.)

(2) "USIB DEPARTMENTS ONLY"

Foreign intelligence so marked will not be disseminated to departments and agencies not represented on the U.S. Intelligence Board without the permission of the originating agency. Within each USIB department and agency dissemination shall be as determined by the recipient senior intelligence official, and may include department or agency contractors and consultants unless specifically prohibited by addition of the "NOT RELEASABLE TO CONTRACTORS OR CONTRACTOR/CONSULTANTS" marking described below. (For special purposes, primarily bibliographic notation, communications and automatic data processing, this marking may be abbreviated USIBONLY.)

(3) "NOT RELEASABLE TO CONTRACTORS OR CONTRACTOR/CONSULTANTS"

Foreign intelligence so marked shall not be disseminated to contractors or contractor consultants without the permission of the originating agency. Examples of when this marking may be used include National Intelligence Estimates and similar national intelligence reports, and other foreign intelligence, which, if disseminated to consultants or contractors, might seriously impair the continuing cooperation of contributing private individuals. This restriction shall not apply to those consultants hired under Civil Service Commission procedures, or comparable procedures derived from authorities vested in heads of departments and agencies by law, and who are normally considered an extension of the office by which they are employed. In applying this control marking, originators will give consideration to the need of USIB member Departments and Agencies to use contractor consultants and contractors to perform services which cannot be adequately performed by U. S. Government personnel. (For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated NOCONTRACT.)

(4) "CAUTION—PROPRIETARY INFORMATION INVOLVED"

This marking will be used in conjunction with foreign intelligence obtained from various sources in the U.S. private business sector, and as the information may bear upon proprietary interests of the source, or may otherwise be used to the source's detriment. Recipients of reports bearing this marking shall take every reasonable precaution to ensure that the information is not used to the detriment of the source. This marking may be used in conjunction with the "NOT RELEASABLE TO CONTRACTORS OR CONSULTANTS" marking described above. (For special purposes, primarily bibliographic

notation, communication and automatic data processing, this marking may be abbreviated PROPIN.)

(5) "NOT RELEASABLE TO FOREIGN NATIONALS"

Foreign Intelligence so marked involves special considerations requiring that it not be released in any form to foreign governments, foreign nationals or non-U.S. citizens without the permission of the originating agency. Examples of when this control marking may be used include: the possible compromise of the status of relations with collaborating foreign governments, or officials; or jeopardizing the continuing viability of vital technical collection programs. (For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated NOFORN.) When the originating agency predetermines that information can be released to a specified foreign government(s) the following marking may be used: "THIS INFORMATION HAS BEEN AUTHORIZED FOR RELEASE TO (specified country(s))." (For special purposes, primarily bibliographic notation, communications, or automatic data processing, this marking may be abbreviated "REL (specified countries).")

6. Procedures governing use of control markings

a. Any recipient desiring to use foreign intelligence in a manner contrary to the restrictions established by the control markings set forth above shall obtain the permission of the originating agency. Such permission applies only to the specific purpose agreed to by the originator and does not automatically apply to all recipients of the information as originally disseminated unless the originating agency removes the control markings for the benefit of the recipients. In those cases where dissemination outside the recipient agency is desired utilizing lesser or no control markings, the recipient agency should prepare a sanitized version which may be released with the originator's permission.

b. Control markings authorized in paragraphs 3d and 5 above, shall be displayed prominently on documents, incorporated in the text of communication messages, and associated with data stored or processed in automatic data processing systems. Unless the entire document justifies the protection of the control marking(s), each portion requiring the marking(s) shall, to the extent feasible, be marked with the appropriate marking abbreviation authorized by this directive.

c. The standardized restrictions and control markings set forth in this directive are to be employed uniformly by all departments and agencies in the intelligence community, thereby assuring like control and restrictions on the use of foreign intelligence disseminated within the departments and agencies represented on the USIB.

d. The substance of this directive shall be published in appropriate regulatory or notice media of each agency or department, together with appropriate procedures permitting rapid interagency consultation concerning utilization of intelligence and information. For this purpose, each USIB agency will designate a primary referent.

7. Report of unauthorized disclosure

Violations of the foregoing restrictions and control markings that result in unauthorized disclosure by one agency of the foreign intelligence of another shall be reported to the Director of Central Intelligence through the USIB Security Committee.

8. Prior restrictions and markings

Questions with respect to the current application of control markings authorized by earlier directives on the dissemination and control of intelligence and utilized on documents issued prior to the date of this directive should be referred to the originating agency. These markings are: WARNING NOTICE—SENSITIVE SOURCES AND METHODS INVOLVED, CONTROLLED DISSEM, NSC PARTICIPATING AGENCIES ONLY, INTEL COMPONENTS ONLY, LIMITED, CONTINUED CONTROL, NO DISSEM ABROAD, BACKGROUND USE ONLY and NO FOREIGN DISSEM.

W. E. Colby
Director of Central Intelligence

ADMINISTRATIVE—INTERNAL USE ONLY
INTELLIGENCE ACTIVITIES

HR

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or automatic data processing, this marking may be abbreviated REL (specified country(s)).

f. **OTHER MARKINGS.** The following are several additional control statements, not prescribed by DCID 1/7.

- (1) **CIA INTERNAL USE ONLY.** This control marking may be used for classified information which if disclosed would violate existing Agency policy regarding protection of sources and methods. Intelligence or information with this marking may not be released or shown to anyone outside the Agency without permission of the originating office. Within the Agency, intelligence or information with this marking may be released only to full-time Agency employees and is not to be disseminated to consultants, external projects, or reserve personnel on short-term active duty unless permission of the originating office is obtained.
- (2) **ADMINISTRATIVE-INTERNAL USE ONLY.** This control marking may be used for unclassified, nonsensitive administrative information that should not be disseminated outside of CIA.
- (3) **FOR OFFICIAL USE ONLY.** This control marking may be used whenever intelligence or intelligence information does not warrant a defense classification, but does require some dissemination limitation. Intelligence or information bearing this marking may be used for official purposes by foreign governments that have been authorized to receive it by the originating agency. It may be disclosed to non-Government persons and organizations only with permission of the originating agency. This control marking is used alone and never in conjunction with a defense classification. Some reasons for requiring such dissemination control are protection under copyright, libel, slander, and communications laws, and protection for moral, ethical, or legal reasons.

g. **METHOD OF MARKING**

- (1) **DOCUMENTS.** If possible, control markings on documents will be in full capitals immediately below the defense classification. If the control marking is used without a defense classification (see subparagraphs f(2) and (3) above), the marking will be made in the same manner required for a defense classification (see HR). Control stamps are available from Building Supply Officers.
- (2) **MULTIPLE CONTROL MARKINGS**
 - (a) If more than one control marking is justified for a document, the markings will be placed, if possible, beneath the defense classification and separated by a horizontal line, preferably two hyphens; for example:

SECRET

USIB DEPARTMENTS ONLY - - NOT RELEASABLE TO CONTRACTORS
OR CONTRACTOR/CONSULTANTS

- (b) If a document is composed of two or more separate items, the appropriate control marking or markings for each item will be shown:

SECRET

USIB DEPARTMENTS ONLY

and

SECRET

NOT RELEASABLE TO CONTRACTORS OR CONTRACTOR/CONSULTANTS

Moreover, the overall publication must be marked with a classification and control to protect every item, for example:

SECRET

USIB DEPARTMENTS ONLY - - NOT RELEASABLE TO CONTRACTORS
OR CONTRACTOR/CONSULTANTS

→ Revised: 21 April 1976 (938)

ADMINISTRATIVE—INTERNAL USE ONLY

15

DATE
HR

~~CONFIDENTIAL~~

INTELLIGENCE ACTIVITIES

f. OTHER MARKINGS

- (1) CIA INTERNAL USE ONLY. This control marking may be used for classified information which if disclosed would violate existing Agency policy regarding protection of sources and methods. Intelligence or information with this marking may not be released or shown to anyone outside the Agency without permission of the originating office. Within the Agency, intelligence or information with this marking may be released only to full-time Agency employees and is not to be disseminated to consultants, external projects, or reserve personnel on short-term active duty unless permission of the originating office is obtained.
- (2) ADMINISTRATIVE-INTERNAL USE ONLY. This control marking may be used for unclassified, nonsensitive administrative information that should not be disseminated outside of CIA.
- (3) FOR OFFICIAL USE ONLY. This control marking may be used whenever intelligence or intelligence information does not warrant a defense classification, but does require some dissemination limitation. Intelligence or information bearing this marking may be used for official purposes by foreign governments that have been authorized to receive it by the originating agency. It may be disclosed to non-Government persons and organizations only with permission of the originating agency. This control marking is used alone and never in conjunction with a defense classification. Some reasons for requiring such dissemination control are protection under copyright, libel, slander, and communications laws, and protection for moral, ethical, or legal reasons.
- (4) SENSITIVE. This control marking may be used in conjunction with a defense classification to indicate that the document requires greater discretionary handling than might be suggested by the defense classification only. The distribution made or agreed to by the originator should not be expanded without consulting the originator. The marking may not be used in lieu of the control marking WARNING NOTICE-SENSITIVE SOURCES AND METHODS INVOLVED.
- (5) See HR [] for application of PL 89-487, the Freedom of Information Law, to the markings described in subparagraphs (2) and (3) above.

g. METHOD OF MARKING

- (1) DOCUMENTS. If possible, control markings on documents will be in full capitals immediately below the defense classification. If the control marking is used without a defense classification (see subparagraphs f(2) and (3) above), the marking will be made in the same manner required for a defense classification (see HR []). Control stamps are available from Building Supply Officers.
- (2) MULTIPLE CONTROL MARKINGS
 - (a) If a document warrants the application of more than one control marking, they will be placed, if possible, beneath the defense classification on a single line and separated by a diagonal line; for example:
 SECRET
 NO FOREIGN DISSEM/CONTROLLED DISSEM
 - (b) If a publication is composed of two or more separate items, the appropriate control marking or markings for each item will be shown; for example, two items might be marked respectively:

SECRET
 NO FOREIGN DISSEM
 and
 SECRET
 CONTROLLED DISSEM

~~CONFIDENTIAL~~ ★

★ declassified in later issuances

LEO J. RYAN, CALIF.
JOHN E. MOSS, CALIF.
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LES ASPIN, WIS.
PETER H. KOSTMAYER, PA.
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BARBARA JORDAN, TEX.

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NINETY-FIFTH CONGRESS
Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

June 10, 1977

PAUL N. MC CLOSKEY, JR., CALIF.
J. DANFORTH QUAYLE, IND.
JOHN N. ENLEBORN, ILL.

Executive Registry

77-1591

OLC #77-2432

63a

REFERENCES

Admiral Stansfield Turner
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Admiral Turner:

In connection with its oversight responsibilities for the Freedom of Information Act, the Privacy Act and government records policies, this subcommittee is concerned with security classification management practices, and with the use of administrative markings and other identification codes which restrict access to documents.

To assist us in evaluating such practices and restrictions, would you please furnish the subcommittee the following information. Even if some questions do not apply to your agency, please respond to all those which do.

1. Is your agency authorized to classify documents under terms of Executive Order 11652? If so, what terms are used within your agency, either formally or informally, officially or unofficially, to indicate gradations or extensions of the term "top secret", "secret", or "confidential"? (For example, "top secret--grade 1", "secret-sensitive", "top secret--eyes only", "noFORN", "official use only", or "non public", etc.) Please list such terms only if used in combination with the standard E.O. 11652 designations.

2. What legend or legends are used by your agency to identify records which are not classifiable under Executive Order 11652 but which are not to be made available outside the department and/or outside the government? For each such term, please list:

(a) Its specific name.

(b) Its application.

(c) The manner in which it was put into use (e.g., agency circular, formal regulation) and by whom (e.g.,

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department head, general counsel). Please enclose a copy of the document putting the term into use.

(d) The authority under which the term was put into use (e.g., statute, executive order). Please include a copy of the statute, executive order, or other document furnishing the authorization.

(e) The date it was put into use.

(f) The last occasion on which the need for such a particular designation was reviewed.

(g) The procedure used to remove the marking after some period of time. (I.e., does the restriction automatically expire? Undergo review?) Simply note if this information is included in the material furnished under (c).

(h) The procedure used to evaluate materials with this marking when they are requested under the Freedom of Information Act (e.g., is marked material automatically withheld from being furnished under FOIA? Can anyone other than the person who initially marked the material remove the marking?)

Rick
✓
(i) Whether this marking has ever either generally or in a specific case been challenged in court? If so, what was the result and what is the case citation?

(j) The number of agency officials who are authorized to determine that a document or record should be marked with this term.

(k) The criteria by which officials are given authority to determine that a document or record should be marked with this term.

(l) Whether this marking has ever been used on documents which also qualify for security classification under Executive Order 11652. If so, why?

(m) Compared to E.O. 11652 security classifications and from a standpoint of document sensitivity, would you say materials carrying this mark are about as sensitive as materials marked confidential, marked secret, or marked top secret? (I.e., how restrictive is this marking supposed to be?)

(n) Whether you consider material marked with this designation to be freely available when it is sent to the National Archives?

*Private
Security
Dec 1/78*

3. Have you stopped using any such legends during the past three years? If so, please list the same details as requested in (a) through (e) of item 2 above, and also state why the legend is no longer used. If some documents still carry this mark from when it was used, please also answer for it questions (g) through (i) and (l) through (n) of item 2 above.

4. How many formal investigations were conducted by your agency at the seat of government between July 1, 1971 and June 30, 1976 into possible violations of your agency's regulations concerning the protection of information which was

(A) Classified under E.O. 11652 or its predecessor, E.O. 10501?

(B) Administratively restricted by use of some term described in your response to question 2 above?

*US 4-7
DGC*

(Do not include routine "desk checks" or similar routine supervision or information protection procedures in tabulating responses to this question.)

Answering separately for categories (A) and (B) above,

(a) How many of those investigations concerned improper physical protection of information?

(b) How many of those investigations concerned failure to assign a high enough security designation to information?

(c) How many of those investigations concerned the assignment of too high a security designation to information?

5. Answering separately for categories (A) and (B) of question 4, in how many instances from July 1, 1971 to June 30, 1976, were

(a) Criminal charges filed, or recommended to be filed, based on failure to protect information?

(b) Administrative hearings held on the same basis?

(c) Administrative penalties, ranging from reprimands, to loss of pay for specified periods, to dismissal, assessed on the same basis?

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6. Answering separately for categories (A) and (B) of question 4, in how many instances during the same five year period were charges filed or recommended, administrative hearings held, or penalties of any sort assessed on the basis of over-classification or other excessive restriction on access to information? how?

7. If your agency conducts investigations for other agencies of the Federal government, state how many formal investigations into possible violations of E.O. 10501 or E.O. 11652 were conducted for those agencies at the seat of government during the five year period.

(a) How many of those investigations concerned improper physical protection of information?

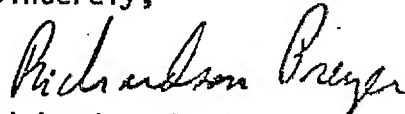
N/A

(b) How many of those investigations concerned the failure to assign a high enough security designation to information?

(c) How many of those investigations concerned the assignment of too high a security designation to information?

We appreciate your efforts of compiling this material. Would you please have responses in the hands of the subcommittee by July 15, 1977. If you have questions in the meantime, please contact Richard L. Barnes of the subcommittee staff at 225-3741.

Sincerely,




Richardson Preyer
Chairman

Approved For Release 2002/08/21 : CIA-RDP80-00473A000700040006-9

16 JUN 1977

MEMORANDUM FOR: Director of Security

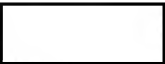
STATINTL FROM : 
Assistant for Information, DDASUBJECT : Congressional Queries Regarding
Classification Management

1. Attached is a letter to the Director from Congressman Preyer who is Chairman of the Government Information and Individual Rights Subcommittee of the Committee on Government Operations. Please note that the Congressman has established a deadline of 15 July for response to his Subcommittee. Therefore, a very prompt response to OLC from the responsible components is called for. We have reviewed his letter and feel that paragraphs 1 through 3 can be most appropriately answered by the DDA staff. Paragraphs 4 through 7 would appear to be appropriate for response by the Office of Security.

2. Would you please draft a response to paragraphs 4 through 7 and submit to me by COB 8 July so that I may consolidate it with our inputs.

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Attachment: a/s

cc: OLC
OGCSTATINTL
STATINTLAI/DDA  (16 June 1977)
Distribution:

Original - Addressee

1 - OLC

1 - OGC

✓ 1 - DDA Subject (filed AI)

1 - DDA Chrono w/o att

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Congress of the United States

House of Representatives

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

June 10, 1977

PAUL N. MCCLOSKEY, JR., CALIF.
J. DANFORTH QUAYLE, IND.
JOHN N. ERLBORN, ILL.

Executive Registry

77-1591

OLC #77-2432

Admiral Stansfield Turner
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Admiral Turner:

In connection with its oversight responsibilities for the Freedom of Information Act, the Privacy Act and government records policies, this subcommittee is concerned with security classification management practices, and with the use of administrative markings and other identification codes which restrict access to documents.

To assist us in evaluating such practices and restrictions, would you please furnish the subcommittee the following information. Even if some questions do not apply to your agency, please respond to all those which do.

1. Is your agency authorized to classify documents under terms of Executive Order 11652? If so, what terms are used within your agency, either formally or informally, officially or unofficially, to indicate gradations or extensions of the term "top secret", "secret", or "confidential"? (For example, "top secret--grade 1", "secret-sensitive", "top secret--eyes only", "noFORN", "official use only", or "non public", etc.) Please list such terms only if used in combination with the standard E.O. 11652 designations.

2. What legend or legends are used by your agency to identify records which are not classifiable under Executive Order 11652 but which are not to be made available outside the department and/or outside the government? For each such term, please list:

(a) Its specific name.

(b) Its application.

(c) The manner in which it was put into use (e.g., agency circular, formal regulation) and by whom (e.g.,

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WHEN FINISHED

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department head, general counsel). Please enclose a copy of the document putting the term into use.

(d) The authority under which the term was put into use (e.g., statute, executive order). Please include a copy of the statute, executive order, or other document furnishing the authorization.

(e) The date it was put into use.

(f) The last occasion on which the need for such a particular designation was reviewed.

(g) The procedure used to remove the marking after some period of time. (I.e., does the restriction automatically expire? Undergo review?) Simply note if this information is included in the material furnished under (c).

(h) The procedure used to evaluate materials with this marking when they are requested under the Freedom of Information Act (e.g., is marked material automatically withheld from being furnished under FOIA? Can anyone other than the person who initially marked the material remove the marking?)

(i) Whether this marking has ever either generally or in a specific case been challenged in court? If so, what was the result and what is the case citation?

(j) The number of agency officials who are authorized to determine that a document or record should be marked with this term.

(k) The criteria by which officials are given authority to determine that a document or record should be marked with this term.

(l) Whether this marking has ever been used on documents which also qualify for security classification under Executive Order 11652. If so, why?

(m) Compared to E.O. 11652 security classifications and from a standpoint of document sensitivity, would you say materials carrying this mark are about as sensitive as materials marked confidential, marked secret, or marked top secret? (I.e., how restrictive is this marking supposed to be?)

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(n) Whether you consider material marked with this designation to be freely available when it is sent to the National Archives?

3. Have you stopped using any such legends during the past three years? If so, please list the same details as requested in (a) through (e) of item 2 above, and also state why the legend is no longer used. If some documents still carry this mark from when it was used, please also answer for it questions (g) through (i) and (l) through (n) of item 2 above. *Priv Info*

4. How many formal investigations were conducted by your agency at the seat of government between July 1, 1971 and June 30, 1976 into possible violations of your agency's regulations concerning the protection of information which was

(A) Classified under E.O. 11652 or its predecessor, E.O. 10501?

(B) Administratively restricted by use of some term described in your response to question 2 above?

(Do not include routine "desk checks" or similar routine supervision or information protection procedures in tabulating responses to this question.)

Answering separately for categories (A) and (B) above,

(a) How many of those investigations concerned improper physical protection of information?

(b) How many of those investigations concerned failure to assign a high enough security designation to information?

(c) How many of those investigations concerned the assignment of too high a security designation to information?

5. Answering separately for categories (A) and (B) of question 4, in how many instances from July 1, 1971 to June 30, 1976, were

(a) Criminal charges filed, or recommended to be filed, based on failure to protect information?

(b) Administrative hearings held on the same basis?

(c) Administrative penalties, ranging from reprimands, to loss of pay for specified periods, to dismissal, assessed on the same basis?

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6. Answering separately for categories (A) and (B) of question 4, in how many instances during the same five year period were charges filed or recommended, administrative hearings held, or penalties of any sort assessed on the basis of over-classification or other excessive restriction on access to information?

7. If your agency conducts investigations for other agencies of the Federal government, state how many formal investigations into possible violations of E.O. 10501 or E.O. 11652 were conducted for those agencies at the seat of government during the five year period.

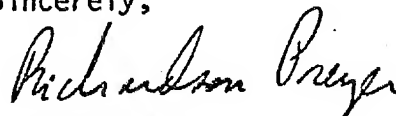
(a) How many of those investigations concerned improper physical protection of information?

(b) How many of those investigations concerned the failure to assign a high enough security designation to information?

(c) How many of those investigations concerned the assignment of too high a security designation to information?

We appreciate your efforts of compiling this material. Would you please have responses in the hands of the subcommittee by July 15, 1977. If you have questions in the meantime, please contact Richard L. Barnes of the subcommittee staff at 225-3741.

Sincerely,



Richardson Preyer
Chairman

OGC 77-3971
23 June 1977

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MEMORANDUM FOR: [REDACTED]

STATINTL

FROM [REDACTED]

Office of General Counsel

SUBJECT : Congressional Inquiry Regarding Classification
Management

1. You have requested that OGC respond to Question 2(i) of a letter of 10 June 1977, to the Director from Congressman Richardson Preyer, Chairman of the Government Information and Individual Rights Subcommittee of the House Committee on Government Operations. That question asks, as to any "legend or legends," which you have identified as "Administrative-Internal Use Only," "For Official Use Only," and "Eyes Only," used by the Agency to identify non-classifiable documents subject to limited distribution,

Whether this marking has ever either generally or in a specific case been challenged in court? If so, what was the result and what is the case citation?

2. The use and meaning of "For Official Use Only" and "Administrative-Internal Use Only" are prescribed in HR [REDACTED] 2) and (3) which indicate these markings generally are intended for application to information which does not warrant a defense classification, but requires some limitation of dissemination. The "Eyes Only" marking is not similarly defined, but its use is recognized in HR [REDACTED] as to certain medical information, HR [REDACTED] regarding statements of financial interests, and HR [REDACTED] and [REDACTED] concerning official cables. These markings appear to have no official basis beyond the regulations and do not serve, by themselves, as a basis for denial of information to requestors. It is difficult to envision the circumstances under which the use of these markings would become subject to challenge and no legal proceedings on any such basis are known to this Office.

3. In short, the answer to Question 2(i) should be merely, "we are aware of no such challenge."



6 JUL 1977

MEMORANDUM FOR: Assistant for Information to the DDA

FROM:

Acting Director of Security

SUBJECT: Congressional Queries Regarding
Classification Management

REFERENCE: Your memorandum dated 16 June 1977,
DDA 77-3499

1. In accordance with your request the following is submitted in answer to those Congressional queries relative to the Office of Security.

Question 4

(A) During the period 1 July 1971 and 20 June 1976, the Office of Security conducted approximately 3,911 investigations into possible violations of Agency regulations concerning the protection of information classified under EO 11652 and EO 10501.

(B) None of the investigations concerned administratively restricted data.

(a) All of the 3,911 investigations concerned improper physical protection of information, although only 2,120 resulted in formal charges.

(b) & (c) None of the investigations concerned the assignment of security designations.

Question 5

(a) In no cases were criminal charges filed or recommended to be filed based on failure to protect information.

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(b) In no cases were administrative hearings held on the same basis.

(c) Of the approximate 2,120 security violations charged, the following administrative penalties were adjudicated under the provisions of HR

STATINTL

(1) First Violation - Oral reprimand by the component division chief or higher authority and warning of possible consequences of further violations.

(2) Second Violation - Written reprimand and warning by the responsible authority concerned, and security check duty for one week.

(3) Third Violation - Suspension without pay for a period not less than one day or more than 30 days, and written warning from the Director of Personnel as to the consequences of a fourth violation.

(4) Fourth Violation - Suspension without pay for a period of not less than two weeks or more than 30 days, and consideration of termination of employment affiliation. (NOTE: In no cases was the dismissal penalty effected.)

2. In reference question 5(c), the Office of Security did not compile statistics as to how many of the 2,120 infractions were concerned with a first, second, third or fourth violation.

3. In discussions with your staff it was resolved that questions 6 and 7 did not have to be answered by the Office of Security.

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